STATE OF CALIFORNIA
DECISION OF THE EDUCATIONAL
EMPLOYMENT RELATIONS BOARD

ORDER

In the Matter of Petitions for Reconsideration:	
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, Employer, Petitioner/Respondent, and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CAMELLIA CHAPTER 560, Employee Organization, and SACRAMENTO-SIERRA'S BUILDING AND CONSTRUCTION TRADES COUNCIL, Employee Organization, Petitioner, and SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 22, AFL-CIO, Employee Organization, Petitioner/Respondent, and AMALGAMATED TRANSIT UNION, DIVISION NO. 256, Employee Organization, Petitioner, and SACRAMENTO ASSOCIATION OF CLASSIFIED EDUCATIONAL EMPLOYEES, Employee Organization, and AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, Employee Organization.	Case Nos. S-R-8 S-R-234 S-R-355 S-R-429 EERB Decision No. 30 Requests for Reconsideration October 18, 1977

The Educational Employment Relations Board hereby denies petitioners' requests for reconsideration in the above-captioned matter.

Educational Employment Relations Board

by

STEPHEN BARBER
Executive Assistant to the Board

Jerilou H. Cossack, Member, concurring:

I concur in the decision to deny the requests for reconsideration filed by the Building Trades Council, the District and the Transit Workers. I believe that an administrative agency, as Justice Tobriner writing for the California Supreme Court stated, "must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.... Among other functions a findings requirement serves to conduce the administrative body to draw legally relevant subconclusions supportive of its ultimate decision; the intended effect is to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions.... They also serve a public relations function by helping to persuade the parties that administrative decision-making is careful, reasoned, and equitable." Topanga Assn. v. County of Los Angeles, 11 Cal.3d 506, 113 Cal.Rptr. 836 (1974). This is particularly true in a case such as this where there is a dissenting

opinion. However, a majority of this Board has determined that in cases of this type the majority will not set forth its findings of fact and conclusions of law. It would be an exercise in futility for me, as one member, to do so, since neither the parties nor any reviewing court could rely upon one member's opinion as accurately reflecting the reasoning of the Board as a whole.

Jerilou H. Cossack, Member

Reginald Alleyne, Chairman, dissenting:

I dissent from the order denying the requests for reconsideration of our decision not to approve separate units of craft and transportation employees. I would grant the requests and allow the parties ten days to attempt to reach agreement on these issues, failing which the order would be reinstated.

The Requests of the District, BCTC and SEIU--The Craft Unit

The requests for reconsideration of our denial of a separate craft unit are sought by the District, BCTC and SEIU, three of the four parties seeking approval of a separate craft unit, and not objected to by a fourth party, CSEA, which sought to represent craft employees as part of a wall-to-wall unit. No other parties directly or indirectly sought to represent craft employees.[1] With this consensus, I view the requests for reconsideration as a clear signal that the parties concerned with craft employees would now settle this case by consenting to the separate craft unit

[1]Since no other parties sought a unit of craft employees or otherwise sought to represent craft employees in any unit, other parties in the case need not be party to an agreement to allow a separate craft unit.

originally sought by BCTC and disallowed by our order of September 20, 1977. The Board fails to read this signal, or, having read it, chooses to ignore it.

I believe now, as I did when we decided the unit aspect of this case, that as a decision in a disputed case, our decision disallowing the separate craft unit is substantively correct and consistent with a prior Board precedent.[2] The mistake (including my own) made by the Board was our decision to decide this and other issues in advance of a settlement conference then scheduled to take place shortly after we reached the decision eventually published on September 20. By chance (and not by design), the decision was published the same day as the settlement conference and not before. As intended, it was presented to the parties at the outset of the settlement conference. Our decision should have been withheld until it became evident that the parties would not settle all or part of the case at the settlement conference.

The scheduled settlement conference was not simply a meeting called by the parties. It was called at the request of the EERB's General Counsel, who, in setting it up, was implementing a motion unanimously adopted by the Board at a public meeting on September 6, 1977 to make an active settlement attempt in this case, even though it was on the docket of the Board itself and a decision might be pending.[3]

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[2]See Fremont Unified School District, EERB Decision No. 6, December 16, 1976.

[3]The motion offered by Member Cossack and unanimously adopted by the Board at its public meeting of September 6, 1977 provides:

> That the hearing officer contact all of the parties in Sacramento City and see what, if any, of the outstanding issues they would be prepared to agree upon and thus, withdraw from Board consideration.

In addition, EERB Rule 33000 states our policy concerning settlements. It provides:

> Voluntary Resolution of Dispute. It is the policy of the Board to encourage the persons covered by the Act to resolve questions of representation by agreement among themselves, provided such agreement is not inconsistent with the purposes and policies of the Act and the Board.

We have consistently approved settlement agreements not consistent with EERB precedents in disputed cases, so long as the agreement "is not inconsistent with a clear and specific mandate of the Act." See Tamalpais Union High School District, EERB Decision No. 1, July 20, 1976. Gov. Code Sec. 3545 gives the EERB the discretion to deny a separate craft unit in a disputed case. S.B. 839, effective in part January 1, 1978, and, in other respects, July 1, 1978, will take away that discretion in respect to state employees newly covered under that amendment. In these circumstances, it is impossible to say that an agreement to allow a separate craft unit is "inconsistent with a clear and specific mandate of the Act."

An EERB hearing officer, representing the General Counsel, presided over the September 20 settlement conference. But what was announced as a settlement conference turned out to be a decision-announcement conference on a major portion of the case. It is true that at the settlement conference, successful efforts were made to settle those aspects of the case not covered by the Board's order of September 20, but the point is that under the circumstances the parties should have been allowed to attempt to settle the entire case in advance of a Board decision on any aspect of it.

But for this extraordinarily postured request for reconsideration, the Board might now rationalize that the craft-union issue would not have settled if the parties had made the attempt at the settlement conference and before our craft-unit decision issued. But the nature of these requests for reconsideration deprives us of that luxury and makes self-evident our original mistake, now compounded by the denial of these requests for reconsideration.

The Requests of ATU and SEIU--The Transportation Unit

The settlement message is not as clear for ATU's request for reconsideration. The District has not joined in the request. Earlier, the District opposed ATU's original petition for a separate transportation unit. Nonetheless, on viewing the case as a whole, I am persuaded that the absence of objections to ATU's request for reconsideration, while not the same as joinder in the request by other parties, means that the District and CSEA might consent to ATU's requested unit.[4]

Conclusion

Settlements in labor disputes have a unique value. Except in representation disputes terminating in a "no representation" vote, labor disputants do not ordinarily walk away from each other when their disputes end; they continue to have a working relationship, the quality of which can be endangered by protracted litigation. In labor disputes, more so than in other civil litigation, the early settlement is better than a late settlement, and the late settlement is better than no settlement;

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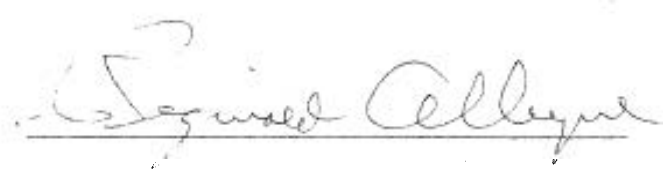
[4]The parties who sought the separate transportation unit were ATU and SEIU. Other than CSEA, no other party sought to represent transportation employees in any unit. The District, having opposed the petition for a separate transportation unit, would have to be a party to any settlement concerning that unit. No other party in this case need be a party to a settlement agreement on this proposed unit.

settlement of a whole case is better than a partial settlement, and a partial settlement is better than no settlement. With a craft-unit decision not acceptable to three parties and of no apparent concern to a fourth, the possibility of protracted litigation in the courts by way of an appeal from the Board's decision is very high; the possibility of ensuing danger to future inter-party relations is, consequently, high. Here, as in no other case that I know of or have heard of, the possible harm to the parties' relations would stem totally from frustration with this Board rather than contentiousness. For the anomaly of their appeals to the judiciary would be that none of the parties to the appeal would be opposing each other; they would all be opposing the EERB, all seeking the same remedy on the same issue.[5] Only to a possibly insignificant degree is all of this not true in the case of the ATU request.

It might well be that my analysis of the possibilities of a settlement is incorrect. Assuming that it is incorrect, I fail to see what the Board and the parties will lose, beyond a little time and effort, if the Board proceeds as recommended here. With so much to be possibly gained and so little to be lost, I find it easy to determine that these requests for reconsideration should be granted.

I would grant the requests for reconsideration in respect to the requested craft and transportation units only, let the Board order of September 20, 1977 stand on the remainder of the operations-support services unit and all other units, stay the effect of the transportation and craft-unit portions of the order for ten days and permit the parties to attempt to reach an agreement, failing which the stay would automatically dissolve and the order would become effective to the extent that no agreement was reached.



Reginald Alleyne, Chairman

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[5] It is not clear to me that the EERB would have standing as a party in an appeal from an order under attack by all proper parties seeking the same result. Not having reflected fully on that question, I simply assume, for the sake of discussion here, that the EERB would have standing in such a case.